client from a predicament but for which there would not have been the existing relation of lawyer and client.

To countenance the theory that a lawyer may invest in his client's property or in a mortgage against it if no pecuniary harm comes to the client would be to open the door to the utter break-down of the highest standard of conduct required of the lawyer in the unadulterated representation of his client who has no motive whatever except to serve his client in the cause. When personal extraneous pecuniary interest encroaches into the relationship, the singleness of fidelity and faithfulness has been adulterated and the dignity of the profession and the respect of the public for it fly out the window. If the client keeps his hands off of his client's property, he can not come to grief or bring disrespect upon bench and bar.

Reply to
Page 14 of the Answer Brief

"INTEREST"

We are quite aware that whether interest should be paid upon sums held in a Court of Bankruptcy which are realized from the sale of security is an unsettled question.

Where, as here, the secured notes bear 5½% which was far above the market price of the money, it would seem that when the mortgagee-debtor importuned the court to pay them, and there was ample funds in the court to pay all expenses, costs and claims, and more, they should be paid; he should not be compelled to continue to pay interest. Otherwise the courts open themselves to the charge that they are an effective agency for continuing a profitable investment for a creditor at a rate of return it could not otherwise obtain.

Respectfully submitted,

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May 19, 1950

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190219

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. ——

JOHN F. KINCAID, PETITIONER

v.

FRANK CAMPBELL LITTLETON, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

John F. Kincaid, petitioner, prays that a writ of certiorari issue to review so much of the judgment of the United States Court of Appeals for the Fourth Circuit as pertains to this petitioner.

OPINIONS BELOW

The opinion of the District Court (R. 60A) is unreported. The prevailing and dissenting opinions in the Court of Appeals (R. 118) are reported in 179 F.2d 848.

JURISDICTION

The judgment of the Court of Appeals was entered on January 12, 1950. By order of the Chief Justice of the United States, dated April 11, 1950, the time for filing this petition for writ of certiorari was extended to and including May 5, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTES INVOLVED

Section 75(b) of the Bankruptcy Act, 11 U.S.C. § 203(b):

> Upon filing of any petition by a farmer under this section there shall be paid a fee of $25 to be transmitted to the clerk of the court and covered into the Treasury. The conciliation commissioner shall receive as compensation for his services a fee of $25 for each case submitted to him, to be paid out of the Treasury when the conciliation commissioner completes the duties assigned to him by the court. A supervising conciliation commissioner shall receive, as compensation for his services, a per diem allowance to be fixed by the court, in an amount not in excess of $10 per day, together with subsistence and travel expenses in accordance with the law applicable to officers of the Department of Justice. Such compensation and expenses shall be paid out of the Treasury. If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer, as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. Nothing contained in this section shall pre-

vent a conciliation commissioner who supervises such farming operations from receiving such compensation therefor as may be so agreed upon. No fees, costs, or other charges shall be charged or taxed to any farmer or his creditors by any conciliation commissioner or with respect to any proceeding under this section, except as hereinbefore in this section provided. The conciliation commissioner may accept and avail himself of office space, equipment, and assistance furnished him by other Federal officials, or by any State, county, or other public officials. The Supreme Court is authorized to make such general orders as it may find necessary properly to govern the administration of the office of conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived.

Section 75(s)(4) of the Bankruptcy Act, 11 U.S.C. § 203(s)(4):

The conciliation commissioner, appointed under subsection (a) of this section, as amended, shall continue to act, and act as referee, when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of this subsection, and continue so to act until the case has been finally disposed of. The conciliation commissioner, as such referee, shall receive such an additional fee for his services as may be allowed by the court, not to exceed $35 in any case, to be paid out of the bankrupt's estate. No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged

> a bankrupt, under this subsection, but all such additional filing fees or costs of administration or supervision shall be charged against the bankrupt's estate. . . .

QUESTION PRESENTED

Whether a conciliation commissioner in farmer-debtor and bankruptcy proceedings under Section 75 of the Bankruptcy Act is entitled to only $60.00 as compensation for his services when he has so administered the large estate of a debtor over a period of some seven litigious years that all claims were paid in full and a surplus in excess of $20,000.00 left for the benefit of the debtor.

STATEMENT

The respondent farmer-debtor, Frank C. Littleton (hereinafter called the debtor) for a number of years owned "Oak Hill", an estate of approximately 1700 acres in Loudoun County, Virginia. This estate was once the home of President James Monroe and contains one of the historic houses of Virginia (R. 61A, R. 118). In the early summer of 1941 respondent found himself burdened by a heavy debt amounting to approximately $182,730.70, and, being unable to meet his obligations, he sought the benefits of Section 75 of the Bankruptcy Act by filing on June 18, 1941, his petition as a farmer-debtor in the United States District Court for the Eastern District of Virginia (R. 49A, R. 75A, R. 118). In accordance with the statute the District Court referred the matter to petitioner, as conciliation commissioner (R. 119). Upon the failure of the debtor to effect a composition with his creditors, and

upon his amended complaint, he was adjudged a bankrupt, and further proceedings were carried on under Section 75(s) of the Bankruptcy Act. Petitioner continued to act as conciliation commissioner and as referee in bankruptcy (R. 60A, R. 119).

For almost eight litigious years the petitioner as conciliation commissioner and referee saw to the administration of the assets of the debtor. He carried out his duties conscientiously and skillfully. He spent nearly three weeks in appraising the real estate and innumerable items of personal property of the debtor (R. 53A). He had to deal with some eighteen different attorneys who represented the debtor at various stages of the proceedings (R. 72A). He consulted frequently with counsel for the creditors and held five sessions of creditors' meetings (R. 53A). He rendered numerous services to the debtor who continually raised obstacles to hinder the settlement of the estate (R. 72A). He was required to attend the District Court in Richmond approximately twelve times and in Alexandria a like number of times (R. 53A). He gave considerable assistance to the two trustees who were appointed by the District Court to sell the debtor's real property (R. 2A, 53A), and who themselves were allowed $1,170.00 apiece as compensation (R. 3A). Finally after the sale petitioner spent much time in consultation with the purchaser and his attorneys (R. 54A).

During these years petitioner was more than fair and helpful toward the debtor, but the latter, nevertheless, took numerous objections and exceptions to the reports and actions of the conciliation commissioner (R. 72A). In a former appeal in this matter to the Court of Appeals the

debtor objected to the order of the District Court directing the sale of the real property. The Court of Appeals ruled as follows:

> "The bankrupt has had every advantage under the law that the statute contemplates and more and has delayed his creditors for more than six years in the enforcement of their rights. The questions raised by his appeal have no merit. The order appealed from will be affirmed."

Littleton v. *Rust*, 166 F.2d 1007, 1008, *certiorari denied*, 334 U.S. 833.

From the sale of the debtor's real property the sum of $220,000.00 was realized (R. 11A), and the sale was confirmed by the District Court, December 16, 1948 (R. 2A). After the payment of the expenses of sale the court directed petitioner to prepare a scheme of distribution for the balance of $216,277.21 (R. 11A). Petitioner reported a scheme of distribution on April 13, 1949 (R. 47A), and, with certain minor modifications, it was ratified and confirmed by the District Judge in spite of exceptions taken to it by the debtor (R. 74A). Under the scheme of distribution as approved by the District Court all expenses of administration and claims against the debtor were paid in full, and there was a surplus of $23,595.47 remaining to be turned over to the debtor (R. 76A).

From this order of the District Court directing distribution of the funds the debtor appealed to the Court of Appeals for the Fourth Circuit (R. 77A, R. 117). Among other points raised, and the one with which the instant petition is concerned, the debtor objected to the allowance

to petitioner for his services as referee the sum of $1,877.13, which was one per cent of the amount to be paid to creditors, and to the allowance to petitioner of the additional sum of $1850.00 as "compensation supervising property, and extraordinary services rendered, travel expenses, etc." (R. 76A). The District Judge computed this latter figure of $1850.00 "at the approximate rate of $250.00 per year during the term of his (petitioner's) services" as conciliation commissioner.

The majority of the Court of Appeals admitted that "This just appraisal of the work of the conciliation commissioner demonstrates that he has fully earned the amounts allowed by the District Court, and it is with regret that we are obliged to set them aside, especially as the services were rendered to an estate of substantial size which has been so handled as to pay all the claims against it and leave a surplus of $20,000.00 for the debtor." (R. 125). Yet the court below by an inflexible and narrow interpretation of Section 75(b) and Section 75(s)(4) of the Bankruptcy Act disaffirmed the amount allowed to petitioner by the District Court and granted him only $60.00 for his work of eight years. Judge Barksdale, dissenting, refused to so construe the statute "as to deprive this Conciliation Commissioner of compensation which he has so justly earned," and he did not believe that such a construction was required (R. 134). He thought that the reasons for the limitation on amounts allowable to a conciliation commissioner are destroyed when there is a surplus remaining after distribution to creditors. Congress did not intend to give a solvent farmer debtor the

extensive services of a conciliation commissioner at a nominal cost.

SPECIFICATION OF ERROR TO BE URGED

The Court of Appeals erred in holding that under the circumstances of this case a conciliation commissioner is limited by Section 75(b) and Section 75(s)(4) of the Bankruptcy Act (11 U.S.C. § 203(b) and § 203(s)(4)) to compensation of only $60.00.

REASONS FOR GRANTING THE WRIT

This petition presents a novel matter of substantial importance to the effective administration of Section 75 of the Bankruptcy Act. The court below has held that no matter how much time, expense, and labor a conciliation commissioner devotes to a farmer-debtor proceeding, which results in a solvent estate for the benefit of the debtor, the conciliation commissioner can receive only $60.00 compensation. By its holding the Court of Appeals has placed a restriction upon the equity power of the bankruptcy court, which affects the proper functioning of Section 75 of the Bankruptcy Act. This decision runs contrary to the broad equitable principles enunciated by this Court and in accordance with which the administration of bankrupt estates is conducted. Moreover the result reached by the majority of the Court of Appeals is so unjust and unconscionable as to invoke the supervisory and corrective powers of this Court. For these compelling reasons it is submitted that review of the decision below is warranted.

1. It is well established that courts of bankruptcy are essentially courts of equity and their procedings are to be administered in accord with the general principles and practices of equity. *Pepper* v. *Litton*, 308 U. S. 295, 304; *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 240; *Bardes* v. *First National Bank of Howarden*, 178 U. S. 524, 534.

Thus in *Securities and Exchange Commission* v. *United States Realty and Improvement Co.*, 310 U. S. 434, 455, the Court stated:

> "A court of equity may in its discretion in the exercise of the jurisdiction committed to it grant or deny relief upon performance of a condition which will safeguard the public interest."

And in *Young* v. *Higbee Co.*, 324 U. S. 204, 214, it was said:

> "It is argued that even though the money paid in excess of the stock value does in equity and good conscience belong to the stockholders, the bankruptcy court is without power to award the relief prayed. Courts of bankruptcy are courts of equity and exercise all equitable powers unless prohibited by the Bankruptcy Act."

"The bankruptcy courts have exercised these equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates." See *Pepper* v. *Litton*, 308 U. S. 295, 305, and cases there cited. New remedies have been contrived where those at law were inadequate. See *Tyler* v. *Marine Midland Trust Co.*, 128 F.2d 927; *Scottsville Nat. Bank* v. *Gilmer*, 37 F.2d 227;

In re *Franklin Brewing Co.*, 254 Fed. 910. "In the exercise of its equitable jurisdiction the bankruptcy court has the power to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate." *Pepper* v. *Litton*, 308 U. S. 295, 307-308. And in passing upon claims and contentions "a sufficient consideration may be simply the violation of rules of fair play and good conscience by the claimant." *Id* at 310.

It is this violation of the rules of fair play and good conscience on the part of the debtor with which the instant petition is concerned. The District Court's appraisal of the work of the petitioner was characterized as "just" by the Court of Appeals and is as follows:

> "In the case now before the Court, the Conciliation Commissioner has found it necessary to deal with some eighteen different lawyers who at one time or another have served as counsel for the debtor in addition to counsel for the various creditors. He has found it necessary to attend court hearings on numerous days. He has had many hearings in his office. It has been necessary for him to inspect the property of the debtor periodically, that he keep insurance in effect, and various other duties have devolved upon him. The record discloses that in few, if any, instances he has received co-operation from the debtor. On the contrary, the debtor has presented innumerable obstacles to various efforts exerted by the Commissioner for the benefit of creditors and for the benefit of debtor's estate. On a number of occasions the debtor has harassed the Commissioner unnecessarily and has occasioned him trips from Loudoun

> County to Richmond to assert trivial objections to items of expense involving nominal amounts. The services rendered by the Commissioner have really been in the nature of those rendered by a supervising commissioner and while I have some doubt as to this portion of the Commissioner's claim, I do feel that fairness and equity demand that he, at the least, be compensated for time actually spent by him over a period of approximately seven years. It must be borne in mind that this is not a fee charged to the debtor but is chargeable to the debtor's estate which has benefited and profited by the services rendered by the Commissioner and Referee. I am therefore allowing a fee of $1,850.00 on this claim, being at the approximate rate of $250.00 per year during the term of his services."

Now the debtor, the very person who has benefited most from the labor and skill of petitioner, is attempting to deprive petitioner of any remuneration therefor. The transcript of the record in this matter, which has been lodged with the Court, contains 595 pages and is unimpeachable evidence of the efforts, fortitude, and efficiency of petitioner. Without the splendid services that petitioner rendered as conciliation commissioner, in all likelihood, the debtor would have had no estate over and above that of his secured creditors. As it is he will receive in cash after the payments of all his obligations, including those here contended for, a sum of money in excess of $20,000.00.

The claim of the debtor, which was accepted by the majority of the Court of Appeals, that petitioner is entitled to compensation of no more than $60.00 is inequitable,

to say the least. This conclusion by the court below injects into the law a preposterous absurdity. Having taken full advantage of the eminent services rendered by petitioner the debtor should be estopped to deny that petitioner is entitled to the moderate allowance made to him. There clearly has been a violation of the principles of fair play and good conscience, and equity should undo the wrong or intervene to prevent its consummation. *Pepper* v. *Litton*, 308 U. S. 295, 311.

2. Insolvency, the debtor's inability to pay his debts in full, is the basis of the bankruptcy law. It is the jurisdictional foundation upon which the machinery of the Bankruptcy Act has been erected. In re *Lenox*, 2 F.2d 92, 93. Hence Congress, in the Act as originally drawn, did not foresee and did not provide for the disposition of surplus assets under the control of the court after the payment of creditors in full. The courts, however, relying upon their equity jurisdiction directed that any balance after the satisfaction of claims in full should be paid to the bankrupt. *Berl* v. *Crutcher*, 60 F.2d 440; *Johnson* v. *Norris*, 190 Fed. 459. "In such a situation, where in fact all the creditors are paid in full, every principle of equity would require the payment of such balance to the bankrupt, not because of any provision in the Bankruptcy Act, but because equity would clearly demand it." In re *Lenox*, 2F.2d 92, 93.

Confusion, however, arose as to the disposition of a surplus between a bankrupt and creditors who had not proved their claims within the statutory period set out in

Section 57(n) of the Act.[1] In these circumstances some courts held that this surplus belonged to the bankrupt rather than the tardy creditors. *Burton Coal Co.* v. *Franklin Coal Co.*, 67 F.2d 796; In re *Silk*, 55 F.2d 917; other courts by the exercise of their equity powers extended the time limitations of Section 55(n) in spite of its apparently mandatory language and allowed the dilatory creditors to prove their claims. *Williams* v. *Rose*, 30 F.2d 814; In re *Lenox*, 2 F.2d 92.

Finally in 1938 Congress resolved the problem and added the last sentence to Section 57(n) wherein it adopted the view of the courts which had not considered themselves bound by a strict and literal interpretation of the words of the section.[2]

When Section 75 of the Bankruptcy Act was passed during the depression of the thirties, it was a piece of emergency legislation designed to aid and protect the distressed farmer. Accordingly the Court laid down the rule that "the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress lest its

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[1] As originally enacted in 1898 Section 57(n) provided that "Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication." 30 Stat. 544. In 1926 "one year" was changed to "six months". 44 Stat. 662. By the Act of 1938 this clause of the section now reads as follows: "Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed . . ." 52 Stat. 866.

[2] This last sentence of Section 57(n), which was inserted by the Act of 1938, provides: "When in any case all claims which have been duly allowed have been paid in full, claims not filed within the time herein above prescribed may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case."

benefits be frittered away by narrow journalistic interpretations which disregard the spirit and the letter of the Act." *Wright* v. *Union Central Life Insurance Co.*, 311 U. S. 273, 279. The debtor in this case was allowed more than the full relief afforded by the law. Congress did not contemplate the supervision and settlement of a large and solvent estate by the conciliation commissioner, and therefore made no provision for his compensation in such a situation. Here the allowance of additional fees to the conciliation commissioner is not at the expense of the creditors or the insolvent debtor. In the words of the dissenting judge below, "the allowance of these fees merely results in a reduction in the amount of surplus which will ultimately be turned over to the solvent debtor whose actions during this extended litigation were largely responsible for the additional services rendered and for whose benefit they were principally designed." (R. 133).

Section 75(s)(4) itself provides in the sentence immediately following that which the court below thought controlling as follows: "No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt, under subsection (s) of section 75 of this Act, but all such additional filing fees or *costs of administration or supervision shall be charged against the bankrupt's estate.*" (Italics ours). Here there is no attempt to charge a bankrupt debtor or even an insolvent estate with these fees and costs of administration and supervision. However, there is an attempt, and a fair and reasonable attempt, to charge a solvent estate with such fees and costs.

The cases relied upon by the majority of the Court of Appeals to sustain its position are cases wherein the assets of the bankrupt estate were insufficient to pay all claims in full, and there was no surplus remaining for disposal by the court. Additional remuneration to the conciliation commissioner would have been to the detriment of creditors or an insolvent debtor. Thus under such circumstances Congress forbade further compensation to the conciliation commissioner. In the instant case, however, payment of the modest allowance to the petitioner for his services of eight years harms neither the creditors nor the insolvent estate. Congress did not envisage nor provide for the present contingency in proceedings under Section 75.

In this respect this petition adopts the words of the judge dissenting in the court below:

> "Where a surplus exists, the reasons underlying the limitations on the amounts allowable to a conciliation commissioner lose their force. The sections dealing with the compensation of the commissioner are obviously designed to keep the cost of the proceeding to a minimum so as not to further burden the hard-pressed farmer or to diminish the assets which he does have at the expense of his creditors who normally receive less than the amount of their claims. Clearly, creditors who have been paid in full are not in any way affected regardless of what disposition is made of the funds in excess of the amount of their claims. Nor can it be seriously argued that Congress in its desire to relieve harassed farmers intended to give to a farmer-debtor who subsequently is found to be solvent the benefit of the extensive services of a conciliation commissioner for seven years at no appreciable cost."

CONCLUSION

The petitioner is entitled to the compensation which he has so justly earned, and the court below erred in binding itself by such a narrow and inflexible interpretation of Sections 75(b) and 75(s)(4) of the Bankruptcy Act. The decision of the Court of Appeals raises considerations of substantial importance with respect to proceedings instituted under Section 75, which should be reviewed by this Court. Accordingly this petition for a writ of certiorari should be granted.

Respectfully submitted,

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